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TRADE SUMMARY

¶1. The U.S. goods trade deficit with Nicaragua was $771 million in 2006, an increase of $215 million from $555 million in 2005. U.S. goods exports in 2006 totaled $755 million, up 20.7 percent from the previous year. In 2006, U.S. imports from Nicaragua were $1.5 billion, a 29.2 percent increase over 2005. Nicaragua is currently the 73rd largest export market for U.S. goods.

¶2. The stock of U.S. foreign direct investment in Nicaragua in 2005 was valued at $245 million (latest data available), up from $215 million in 2004.

IMPORT POLICIES

Free Trade Agreement

¶3. On August 5, 2004, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). CAFTA-DR entered into force for Nicaragua and the United States on April 1, 2006.

¶4. The agreement removes many barriers to trade and investment and will further regional economic integration. CAFTA-DR requires Central American countries and the Dominican Republic to undertake the reforms needed to open markets and provide for greater transparency and certainty in a number of trade-linked public policy areas, including: customs administration, protection of intellectual property rights, services, investment, financial services, government procurement, and sanitary and phytosanitary measures.

Tariffs

¶5. Nicaragua is a member of the Central American Common Market (CACM). Nicaragua imposes regular import duties of 10 or 15 percent on many final consumer goods, a duty of 0 to 5 percent on most primary products, and a duty of 5 to 10 percent on those intermediate goods which compete with CACM products. Some agricultural goods face tariffs higher than the CACM maximum common external tariff of 15 percent. Duties are assessed on the cost, insurance, and freight (CIF) value of goods.

¶6. Under CAFTA-DR, about 80 percent of U.S. industrial and consumer goods may now enter Nicaragua duty-free. Remaining tariffs will be phased-out by 2016. Nearly all textile and apparel goods which meet the agreement's rules of origin are traded duty and quota free, opening new markets for U.S. and regional fiber, yarn, fabric, and apparel. The agreement's tariff treatment for textile and apparel

goods is retroactive to January 1, 2004.

¶7. More than half of U.S. agricultural exports enter Nicaragua duty-free under CAFTA-DR. Nicaragua will eliminate remaining tariffs on nearly all agricultural goods within 15 years, including those on pork and yellow corn. Nicaragua will eliminate tariffs on chicken leg quarters and rice by 2024 and on dairy products by 2026. For the most sensitive products, tariff-rate quotas (TRQs) will permit immediate duty-free access for specified quantities during the tariff phase-out period, with the duty-free component expanding over time. Nicaragua will liberalize trade in white corn through expansion of a TRQ, rather than through a series of tariff reductions.

Non-Tariff Measures

¶8. The government levies a "selective consumption tax" on some luxury items that is 15 percent or less, with a few exceptions. The tax is not applied exclusively to imports; however, domestic goods are taxed on the manufacturer's price while imports are taxed on the CIF value. Alcoholic beverages and tobacco products are taxed on the price charged to the retailer.

STANDARDS, TESTING, LABELING AND CERTIFICATION
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¶9. On February 18, 2005, the executive issued a decree authorizing the agriculture ministry to recognize the equivalency of foreign meat and poultry inspection systems. After inspecting the U.S. meat and poultry inspection system, the Government of Nicaragua indeed recognized the equivalence of the U.S. food safety and inspection system for meat and poultry, thereby eliminating the need for further meat packing plant inspections in the United States.

¶10. The U.S. Animal and Plant Health Inspection Service maintains protocols with Nicaragua for the export of U.S. rice, wheat, yellow corn, and seed potatoes. All packaged food products must be registered with the Ministry of Trade, Industry, and Development. If a product is imported in bulk and packaged in Nicaragua, a phyto/zoosanitary certificate is required from the country of origin and the Nicaraguan Ministry of Health. A phyto/zoosanitary certificate issued by Nicaragua is not required for products packaged in the United States.

¶11. Under CAFTA-DR, Nicaragua reaffirmed its commitment to abide by the terms of the World Trade Organization's (WTO) Import Licensing Agreement. Import licenses are required to import alcoholic beverages; all brands of alcoholic beverages must be registered annually with the Ministry of Health. U.S. industry has expressed concern about Nicaragua's proposed standards for alcoholic beverages distilled from sugarcane. The five Central American countries, including Nicaragua, are developing common standards for the import of several key products, including distilled spirits, an effort which should eventually facilitate trade.

¶12. Law 291, approved in 1998, regulates the import of products of agricultural biotechnology. The law was modified in 2003 to establish the Commission on Risk Analysis for Genetically Modified Organisms (CONARGEN), a panel composed of representatives from government and the academic community. According to the law, the Minister of Agriculture and Forestry, taking into consideration risk analysis conducted by CONAGREN, makes a final decision on biotechnology imports. Through this process, Nicaragua has allowed the entry of yellow corn for animal feed. Law 291 also addresses the field-testing of biotechnology crops.

¶13. Two bills that would regulate the import of products of agricultural biotechnology are pending in the National Assembly. The former Bolanos administration submitted a science-based bill to the National Assembly in 2005, the Law on the Prevention of Risks from Living Organisms Modified through Molecular Biotechnology. This bill comprehensively defines the technical criteria and procedures needed to conduct risk analysis currently required by Law
¶291. The Ortega Administration has submitted a competing bill on Sovereignty, Food Security, and Nutrition that would prohibit the government from accepting food aid containing agricultural biotechnology products. The proposal would also establish a National Commission headed by the President to regulate all food aid

donations and draft, implement, and evaluate food security policies.

¶14. Nicaragua is a signatory of the Cartagena Protocol on Biosafety. As mandated by the protocol, Nicaragua requires that agricultural goods containing living modified organisms (LMOs)--unless they include 95 percent or greater non-LMO content--be labeled to indicate that they "may contain" LMOs.

GOVERNMENT PROCUREMENT

¶15. CAFTA-DR requires the use of fair and transparent government procurement procedures, including advance notice of purchases and timely and effective bid review procedures. U.S. suppliers may therefore bid on procurements sought by most Nicaraguan Government entities, including key ministries and state-owned enterprises, on the same basis as Nicaraguan suppliers. To make its bidding process more transparent and efficient, Nicaragua launched a computer-based procurement system in November 2006. The anti-corruption provisions of CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including government procurement, is treated as a criminal offense, or is subject to comparable penalties. Nicaragua is not a signatory to the WTO Agreement on Government Procurement. Procurement by government entities not covered by CAFTA-DR, as is the case for the National Electricity Company, remains characterized by nontransparent and irregular procurement practices.

EXPORT SUBSIDIES

¶16. Nicaragua does not provide export financing. However, all exporters receive tax benefit certificates equivalent to 1.5 percent of the free on board value of the exported goods. Under CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (e.g., the export of a given level or percentage of goods). Nicaragua may maintain existing duty waiver measures for such time as it remains an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures (SCM). Thereafter, Nicaragua shall maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

¶17. CAFTA-DR provides improved standards for the protection and enforcement of a broad range of intellectual property rights, consistent with U.S. intellectual property standards and emerging international standards. To implement the agreement, Niaragua has strengthened its legal framework for the protection of intellectual property rights by passing several new laws which provide state-of-the-art protections for digital products such as software, music, text and videos; stronger protection for patents, trademarks and test data, including an electronic system for the registration and maintenance of trademarks; and greater deterrence of piracy and counterfeiting.

¶18. Nicaraguan efforts to enforce intellectual property law remain limited. During the first ten months of 2007, the Nicaraguan Government conducted 20 raids and the police seized 58,547 pirated DVDs, 21,629 CDs, 13 computers, 3 multi-purpose copiers, and other audiovisual equipment worth approximately $123,000. In 2006, the government successfully prosecuted a case against a vendor selling pirated DVDs, but that conviction was later overturned. In July 2007, the Nicaraguan Government again successfully prosecuted a case in a local court against a Nicaraguan citizen selling pirated music CDs. The offender was sentenced to two years in prison--later reduced to parole--and fined 5,000 cordobas ($267). The Prosecutor General and National Police are currently investigating 28 intellectual property cases for possible prosecution.

SERVICES BARRIERS

Financial Services

¶19. Nicaragua has ratified its commitments under the 1997 WTO Financial Services Agreement. Those commitments cover most banking services, including the acceptance of deposits, lending, leasing, the issuing of guarantees and foreign exchange transactions. However, these rules do not cover the management of assets or securities. Nicaragua allows foreign banks to operate either as 100 percent-owned subsidiaries or as branches. CAFTA-DR ensures U.S. financial services companies have full rights to establish subsidiaries, joint ventures, or bank branches.

¶20. The country's banking system is now stable following a severe restructuring in 2001-02. In 2005, Nicaragua further strengthened the financial sector through banking law reform, the implementation of improved regulations governing the Superintendent of Banks and other Financial Institutions, and the creation of a deposit guarantee fund. In recent years, large U.S. and foreign banks have invested directly in Nicaragua's financial sector.

¶21. The insurance sector is open to private sector participation. Several private insurance companies compete with the government-owned firm, INISER. Under CAFTA-DR, U.S. insurance suppliers enjoy full rights to establish subsidiaries and joint ventures, with a phase-in provision for branches. Nicaragua allows U.S.-based firms to supply insurance on a cross-border basis, including reinsurance, reinsurance brokerage, as well as marine, aviation, and transport insurance, in addition to other insurance services. Furthermore, Nicaragua accords substantial market access across its entire services regime, subject to very few exceptions.

Other Services Issues

¶22. The Law on Promotion of National Artistic Expression and on Protection of Nicaraguan Artists (Law 215, 1996) requires that foreign production companies contribute 5 percent of total production costs to a national cultural fund. In addition, the law requires that 10 percent of the technical, creative, and/or artistic staff be locally hired. Under CAFTA-DR, Nicaragua does not require U.S. film productions to contribute to the cultural fund or hire locally. Under CAFTA-DR, Nicaragua opened its telecommunications sector to U.S. investors, service providers, and suppliers. U.S. exports of telecommunications equipment receive duty-free treatment. The telecommunications sector is fully privatized and open to competition. Enitel, the former state telephone company, is now 99 percent owned by a Mexican telecommunications company. The mobile telephone industry in Nicaragua is served by two nationwide operators. Enitel controls switching for all cellular service and, therefore, may exercise leverage over companies seeking interconnection. The telecommunications regulator TELCOR has generally encouraged competition in its licensing and regulatory practices. However, a legal dispute between the executive and legislative branches over the country's public regulatory framework has resulted in a leadership stalemate at TELCOR.

INVESTMENT BARRIERS

¶23. CAFTA-DR establishes a secure and predictable legal framework for U.S. investors operating in Nicaragua. Under the agreement, all forms of investment are protected, including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Nicaragua on an equal footing with local investors. Among the rights afforded U.S. investors are due process protections and the opportunity to receive a fair market value for property in the event of an expropriation. CAFTA-DR protects investor rights through an effective, impartial procedure for dispute settlement that is fully transparent. The Nicaraguan Chamber of Commerce and the American Chamber of Commerce of Nicaragua operate separate mediation and arbitration centers.

¶24. During the 1980s, the Sandinista government confiscated some 28,000 real properties. Since 1990, thousands of individuals have filed claims for the properties' return of real property or compensation. Compensation is most commonly granted via low-interest bonds issued by the government. As of September 2007, the Nicaraguan Government had settled more than 4,500 U.S. citizen claims. A total of 677 Embassy-registered U.S. claims remain outstanding. The United States continues to press the Nicaraguan

Government to resolve outstanding claims.

¶25. In August 2007, the Nicaraguan Government seized, via judicial order, several petroleum storage tanks owned by a U.S. company on the pretext that the company had not paid value-added taxes associated with the import of crude oil, despite the fact that unrefined petroleum is not subject to this tax and no mechanism exists to collect it. The government then used the tanks to store petroleum products received from Venezuela under the terms of a state-to-state financing agreement. In a separate instance, the courts ignored due process to declare oil exploration concessions invalid, forcing companies, including some U.S. companies, to renegotiate the terms of their concession agreements that had been tendered in a transparent manner by the previous administration.

ELECTRONIC COMMERCE

¶26. CAFTA-DR includes provisions on electronic commerce that reflect its importance in global trade. Under CAFTA-DR, Nicaragua must provide nondiscriminatory treatment of U.S. digital products, not impose customs duties on digital products transmitted electronically, and work together with the United States in policy areas related to electronic commerce.

OTHER BARRIERS

¶27. The anti-corruption provisions of CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment is treated as a criminal offense, or is subject to comparable penalties. However, voices within and outside Nicaragua have raised concerns that Nicaragua's legal system is weak, cumbersome, and lacks independence. Many members of the judiciary, including those at high levels, are widely believed to be corrupt or subject to outside political pressures. Enforcement of court orders is uncertain and sometimes subject to non-judicial considerations. Courts have granted orders (called an "amparo") to protect criminal suspects of white collar crime by enjoining official investigatory and enforcement actions almost indefinitely. Foreign investors are not specifically targeted, but find themselves at a disadvantage in any dispute with politically connected nationals.

Law 364

¶28. U.S. companies and the U.S. Chamber of Commerce have voiced concern that Nicaraguan Law 364, enacted in 2000 and implemented in 2001, retroactively imposes liabilities on foreign companies that manufactured or used the chemical pesticide DBCP in Nicaragua. DBCP was banned in the United States after the Environmental Protection Agency cancelled its certificate for use (with exceptions) in 1979. U.S. companies have expressed concern that the law and its application under Nicaragua's judicial system lack due process, transparency and fundamental fairness. In particular, the law allows for retroactive application of no-fault liability related to a specific product, waiver of the statute of limitations, irrefutable presumption of causality, truncated judicial proceedings, imposition of a $100,000 non-refundable bond per defendant as a condition for firms to mount a defense in court, and escrow requirements of approximately $20 million earmarked for payment of awards and minimum liabilities as liquidated damages (ranging from $25,000 to $100,000). A November 2006 court order lifted a January 2006 embargo placed by the National Assembly on the trademark rights of a U.S. company allegedly involved in the distribution and use of this pesticide. Some plaintiffs seek to lay claim to U.S. company assets in other countries. The U.S. Government has been working with the affected companies and the Nicaraguan government to facilitate resolution of this issue.

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